

## Part 2

### Governmental Immunity - Statement, Scope, and Effect

#### **63G-7-201 Immunity of governmental entities and employees from suit.**

- (1) Except as otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function.
- (2) Notwithstanding the waiver of immunity provisions of Section 63G-7-301, a governmental entity, its officers, and its employees are immune from suit for any injury or damage resulting from the implementation of or the failure to implement measures to:
  - (a) control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;
  - (b) investigate and control suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act;
  - (c) respond to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health related activities, including the use, provision, operation, and management of:
    - (i) an emergency shelter;
    - (ii) housing;
    - (iii) a staging place; or
    - (iv) a medical facility; and
  - (d) adopt methods or measures, in accordance with Section 26-1-30, for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals they serve.
- (3) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury if the injury arises out of or in connection with, or results from:
  - (a) a latent dangerous or latent defective condition of:
    - (i) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or viaduct; or
    - (ii) another structure located on any of the items listed in Subsection (3)(a)(i); or
  - (b) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement.
- (4) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment, if the injury arises out of or in connection with, or results from:
  - (a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;
  - (b) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;
  - (c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;
  - (d) a failure to make an inspection or making an inadequate or negligent inspection;
  - (e) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

- (f) a misrepresentation by an employee whether or not the misrepresentation is negligent or intentional;
- (g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;
- (h) the collection or assessment of taxes;
- (i) an activity of the Utah National Guard;
- (j) the incarceration of a person in a state prison, county or city jail, or other place of legal confinement;
- (k) a natural condition on publicly owned or controlled land;
- (l) a condition existing in connection with an abandoned mine or mining operation;
- (m) an activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State Lands;
- (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch, canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river, if:
  - (i) the trail is designated under a general plan adopted by a municipality under Section 10-9a-401 or by a county under Section 17-27a-401;
  - (ii) the trail right-of-way or the right-of-way where the trail is located is open to public use as evidenced by a written agreement between:
    - (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail is located; and
    - (B) the municipality or county where the trail is located; and
  - (iii) the written agreement:
    - (A) contains a plan for operation and maintenance of the trail; and
    - (B) provides that an owner or operator of the trail right-of-way or of the right-of-way where the trail is located has, at a minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from the use of the trail;
- (o) research or implementation of cloud management or seeding for the clearing of fog;
- (p) the management of flood waters, earthquakes, or natural disasters;
- (q) the construction, repair, or operation of flood or storm systems;
- (r) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6a-212;
- (s) the activity of:
  - (i) providing emergency medical assistance;
  - (ii) fighting fire;
  - (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
  - (iv) an emergency evacuation;
  - (v) transporting or removing an injured person to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or
  - (vi) intervening during a dam emergency;
- (t) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- (u) an unauthorized access to government records, data, or electronic information systems by any person or entity; or
- (v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a public or private road.

Amended by Chapter 181, 2016 General Session

**63G-7-202 Act provisions not construed as admission or denial of liability -- Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on personal liability -- Public duty does not create specific duty.**

- (1)
  - (a) Nothing contained in this chapter, unless specifically provided, may be construed as an admission or denial of liability or responsibility by or for a governmental entity or its employees.
  - (b) If immunity from suit is waived by this chapter, consent to be sued is granted, and liability of the entity shall be determined as if the entity were a private person.
  - (c) No cause of action or basis of liability is created by any waiver of immunity in this chapter, nor may any provision of this chapter be construed as imposing strict liability or absolute liability.
- (2) Nothing in this chapter may be construed as adversely affecting any immunity from suit that a governmental entity or employee may otherwise assert under state or federal law.
- (3)
  - (a) Except as provided in Subsection (3)(c), an action under this chapter against a governmental entity for an injury caused by an act or omission that occurs during the performance of an employee's duties, within the scope of employment, or under color of authority is a plaintiff's exclusive remedy.
  - (b) Judgment under this chapter against a governmental entity is a complete bar to any action by the claimant, based upon the same subject matter, against the employee whose act or omission gave rise to the claim.
  - (c) A plaintiff may not bring or pursue any civil action or proceeding based upon the same subject matter against the employee or the estate of the employee whose act or omission gave rise to the claim, unless:
    - (i) the employee acted or failed to act through fraud or willful misconduct;
    - (ii) the injury or damage resulted from the employee driving a vehicle, or being in actual physical control of a vehicle:
      - (A) with a blood alcohol content equal to or greater by weight than the established legal limit;
      - (B) while under the influence of alcohol or any drug to a degree that rendered the person incapable of safely driving the vehicle; or
      - (C) while under the combined influence of alcohol and any drug to a degree that rendered the person incapable of safely driving the vehicle;
    - (iii) injury or damage resulted from the employee being physically or mentally impaired so as to be unable to reasonably perform the employee's job function because of:
      - (A) the use of alcohol;
      - (B) the nonprescribed use of a controlled substance as defined in Section 58-37-4; or
      - (C) the combined influence of alcohol and a nonprescribed controlled substance as defined by Section 58-37-4;
    - (iv) in a judicial or administrative proceeding, the employee intentionally or knowingly gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony material to the issue or matter of inquiry under this section; or
    - (v) the employee intentionally or knowingly:
      - (A) fabricated evidence; or
      - (B) except as provided in Subsection (3)(d), with a conscious disregard for the rights of others, failed to disclose evidence that:
        - (I) was known to the employee; and
        - (II)

- (Aa) was known by the employee to be relevant to a material issue or matter of inquiry in a pending judicial or administrative proceeding, if the employee knew of the pending judicial or administrative proceeding; or
- (Bb) was known by the employee to be relevant to a material issue or matter of inquiry in a judicial or administrative proceeding, if disclosure of the evidence was requested of the employee by a party to the proceeding or counsel for a party to the proceeding.
- (d) The exception, described in Subsection (3)(c)(v)(B), allowing a plaintiff to bring or pursue a civil action or proceeding against an employee, does not apply if the employee failed to disclose evidence described in Subsection (3)(c)(v)(B), because the employee is prohibited by law from disclosing the evidence.
- (4) Except as permitted in Subsection (3)(c), no employee may be joined or held personally liable for acts or omissions occurring:
  - (a) during the performance of the employee's duties;
  - (b) within the scope of employment; or
  - (c) under color of authority.
- (5) A general duty that a governmental entity owes to the public does not create a specific duty to an individual member of the public, unless there is a special relationship between the governmental entity and the individual member of the public.

Amended by Chapter 415, 2014 General Session

**63G-7-203 Exemptions for certain takings actions.**

An action that involves takings law, as defined in Section 63L-3-102, is not subject to the requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, and 63G-7-601.

Renumbered and Amended by Chapter 382, 2008 General Session